

DATE: November 26, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05280

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

On August 12, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 12, 2001, (notarized on September 14, 2001) in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 28, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 15, 2001, and he submitted no reply.

The case was assigned to the undersigned for resolution on November 15, 2001.

### **FINDINGS OF FACT**

The Applicant is 25 years old. He is employed by a defense contractor as a Mail Sorter, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated October 12, 1999. In response to question 20, which asked, "Has any of the following happened to you in the last ten years? - Fired from job, - Quit a job after being told you'd be fired-left a job by mutual agreement following allegations of misconduct - Left a job by mutual agreement following allegations of unsatisfactory performance - Left a job for other reason under unfavorable circumstances", the Applicant answered "NO." (See, Government Exhibit 4, Question 20). This was a false answer. The Applicant was terminated from his job in April 1998, after testing positive for marijuana. (Government Exhibit 5). The Applicant admitted that he when he applied for employment with his company he failed to disclose this information because he did not want it to hinder his employment eligibility. The Applicant further admits that he deliberately falsified his security clearance application by failing to admit that he had lost his previous employment because he failed a drug test. (See, Applicant's Answer to SOR dated September 12, 2001).

The same questionnaire asked the Applicant if since the age of sixteen or in the last seven years, whichever is shorter, has he illegally used any controlled substance. The Applicant answered "NO." (See, Government Exhibit 4, Question 27). This was a false answer. The Applicant had used marijuana three or four times in 1998. (Government Exhibit 5). The Applicant admits that he deliberately falsified his security clearance application by failing to admit his marijuana use in 1998. (See, Applicant's Answer to SOR dated September 12, 2001). The Applicant stated that since April 1998, he has not used any illegal drugs, and he has no intentions of ever using illegal drugs in the future.

I find that the Applicant's responses to questions 20 and 27 on his security clearance application of October 12, 1999, were a deliberate attempt to conceal material information from the Government. The information provided by the Applicant was false, and the Applicant knew that it was false at the time he provided it on the application.

The record does not contain sufficient evidence in mitigation to overcome or outweigh the negative effects of the Applicant's false statements to DoD which were provided under a certification of truth or a sworn oath.

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline E (Personal Conduct)

#### Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of dishonesty which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has deliberately and intentionally falsified material facts in his security clearance application (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant deliberately falsified his security clearance application by concealing the fact that he was terminated from a previous employer for failing a drug test, and that he used marijuana several times in 1998. Not only did he conceal this information from the Government, but he concealed it from his employer in order to be eligible for employment. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his or her personal background. This Applicant cannot be considered trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E, (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a

security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge